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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yuba)

RAJINDER TOOR, Plaintiff and Appellant, v. WHEATLAND ELEMENTARY SCHOOL DISTRICT, Defendant and Respondent.	C046523 (Super. Ct. No. VPT030000454)

Hoping to minimize possible layoffs, defendant Wheatland Elementary School District (the District) offered a one-time, $15,000 bonus to induce teachers to retire. Plaintiff Rajinder Toor decided to take advantage of this program, and submitted an irrevocable notice of intent to retire. She subsequently had second thoughts and tried, unsuccessfully, to rescind her decision. Plaintiff filed a petition for writ of mandate to compel the District to return her to her tenured position in the

classroom. The trial court denied the petition and this appeal followed. We affirm the judgment.

STANDARD OF REVIEW

"'A writ of mandate will lie to "compel the performance of an act which the law specifically enjoins, as a duty resulting from an office, trust, or station" [citation] "upon the verified petition of the party beneficially interested," in cases "where there is not a plain, speedy, and adequate remedy, in the ordinary course of law." [Citation.] . . . [T]he writ will not lie to control discretion conferred upon a public officer or agency. [Citations.] Two basic requirements are essential to the issuance of the writ: (1) A clear, present and usually ministerial duty upon the part of the respondent [citations]; and (2) a clear, present and beneficial right in the petitioner to the performance of that duty[.]' [Citation.] [¶] . . . [¶]

"'In reviewing the trial court's ruling on a writ of mandate [citation], the appellate court is ordinarily confined to an inquiry as to whether the findings and judgment of the trial court are supported by substantial evidence. [Citation.] However, the appellate court may make its own determination when the case involves resolution of questions of law where the facts are undisputed.'" (*California Correctional Supervisors Organization, Inc. v. Department of Corrections* (2002) 96 Cal.App.4th 824, 827.)

With these principles in mind, we turn to the facts of this case.

FACTS AND PROCEEDINGS

The District anticipated having to lay off employees at the end of the 2002-2003 school year. In order to minimize the number of people adversely affected, the District proposed a retirement incentive offer of $15,000 to encourage early retirement. This payment was in addition to other incentives offered in the District's Golden Handshake Program, found in article 16 of the collective bargaining agreement.

The Wheatland Elementary School Teachers' Association (WESTA) had no objection to the new proposal, and on March 3, 2003, the District distributed a flyer to its teachers announcing this program. The flyer advertised "one time enhanced retirement options for eligible certificated staff." It explained that "[i]n addition to the single option that an employee could select pursuant to Article 16, unit members who apply on or before March 7, 2003 shall receive a one time $15,000 bonus."

The flyer stated that those who wanted to take advantage of this offer had to meet all eligibility requirements set forth in article 16 for a retirement option, and had to "[s]ubmit to the District, not later than March 7, 2003 at 5:00 p.m., a written statement of their intent to retire. Separation from District service must be effective not later than the end of the 2002/2003 school year."

The flyer continued: "The District will fund up to five (5) applications for enhanced retirement packages. If more than five (5) applications are submitted, the District may fund more

but is not required to do so. Applications will be funded in the order that they are submitted (date and time) to the District Office. [¶] To facilitate applications, employees are encouraged to use (but are not required to use) the form on the back of this page. [¶] Once submitted, the employee's statement of intent to retire is IRREVOCABLE, and shall serve as the employee's resignation at the end of the 2002/2003 school year, unless the District does not fund his/her application." (Bolding omitted.)

The form on the reverse side of the flyer was entitled "Employee Election Form," and provided: "I acknowledge that my election to retire at the end of the 2002/2003 school year is irrevocable, unless the District does not fund my early retirement request." The form included spaces for the date and the employee's signature.

As already noted, this flyer was distributed to teachers on March 3, 2003. Late in the afternoon of Friday, March 7, 2003, the last day for submitting an employee election form, Rajinder Toor drove to the District office after school and talked to two employees in the office (Paula Kesterson and Tamara Johnson) about whether she should take advantage of this program. She was somewhat ambivalent about what to do, so she called her husband from the office to discuss the matter with him. In order to help Toor make her decision, Kesterson and Johnson went on-line to calculate Toor's estimated benefits under the State Teachers Retirement System. Toor then signed and submitted the form on the back of the flyer, acknowledging that her election

to retire at the end of the school year was irrevocable unless the District did not fund her early retirement.

Toor asked for Kesterson's home telephone number, and Kesterson gave it to her, thinking that Toor "probably wanted to talk later in the day to get reassurance or . . . simply to ask more questions."

On Friday night, Toor had second thoughts about retiring and she called Kesterson, who told her that she had made the right decision and she should sleep well. On Saturday and Sunday, Toor left repeated messages on Kesterson's answering machine, asking Kesterson to tear up her employee election form. She also called Johnson and asked her to do the same. Johnson told Toor she had already informed the District's superintendent, Debra Pearson, that Toor had submitted a signed retirement form.

Kesterson called Pearson, who then telephoned Toor and asked her to meet her on Monday morning with a union representative.

Toor did not go to the superintendent's office until Monday afternoon. The superintendent told Toor that she would have to consult legal counsel to see whether Toor's notice of intent to retire could be rescinded since the seniority list for layoffs had been posted. The superintendent subsequently notified Toor that her notice of intent to retire was irrevocable and that the District intended to fund all six of the forms submitted for the retirement incentive.

Toor filed a petition for writ of mandate, seeking to require the District to return her to her tenured position in the classroom for the 2003-2004 year. She asserted that she was entitled to withdraw her notice of intent to retire because her retirement was not yet effective, had not yet been accepted by the District in the manner required by statute, and had not been relied upon by the District. She also asserted that her notice was ineffective because it had been submitted after the 5:00 p.m. deadline. She further argued that no binding agreement had been formed because there was no meeting of the minds.

The trial court rejected these arguments, and concluded that "the District and [Toor's] union could, and did, lawfully enter into the collectively bargained offer for the Option. Pursuant to the terms of the Option, the election, once made, was irrevocable. It is undisputed that on March 7, 2003, the last day to elect the Option, [Toor] submitted her written election. [Toor] is bound by her irrevocable election."

The court denied Toor's petition, and Toor appeals from the ensuing judgment.

DISCUSSION

On appeal, Toor again asserts her notice of intent to retire was not valid and was rescinded before it became effective. Consequently, she argues, she is entitled to be returned to her tenured position with the District. We do not agree.

Before delving into the merits of Toor's claim, we briefly respond to the District's assertion that a petition for writ of mandate does not lie because Toor has not exhausted her administrative remedies. The District misperceives the nature of Toor's complaint. If Toor sought to enforce the provisions of the collective bargaining agreement, charged the District with unfair labor practices, or raised other issues arising under the Education Employment Relations Act (EERA) (Gov. Code, § 3540 et seq.), she would be required to present those claims to the Public Employment Relations Board (PERB) before seeking relief in superior court. (See, e.g., *Personnel Com. v. Barstow Unified School Dist.* (1996) 43 Cal.App.4th 871, 886-887.) But Toor does not raise these types of claims in her writ petition. Instead, her petition asserts her right to a tenured position under the provisions of the Education Code. A writ petition is the appropriate vehicle to seek such relief. (See, e.g., *Kavanaugh v. West Sonoma County Union High School Dist.* (2003) 29 Cal.4th 911, 916, 926.)

But, as we explain, the court properly denied relief in this case.

Although Toor's statement of intent to retire acknowledged that her election was irrevocable, Toor nonetheless contends on appeal that she was entitled to rescind her decision to retire.

Toor predicates much of her argument on the apparent belief that her submission of the notice of intent to retire was the equivalent of a conditional offer of resignation. The comparison is inapt.

Education Code section 44930 et seq. applies to "Resignations, Dismissals and Leaves of Absence" for certificated employees. As we discuss later in this opinion, a resignation must be accepted by the school district's governing board or designee. (Ed. Code, § 44930, subd. (a).) A permanent certificated employee who resigns may be reemployed by the District and regain tenure rights under certain circumstances. (Ed. Code, § 44931.)

In contrast, retirement is a permanent termination of employment involving a change in status from being an active member of the State Teachers' Retirement System to a retired member. (Ed. Code, § 22165.) Normal retirement age is 60. (Ed. Code, § 22148.)

Here, Toor did not submit an offer to resign, but instead accepted the District's offer of a retirement incentive by submitting her notice of intent to retire. This distinction is critical to the points raised by Toor in this appeal.

For example, Toor relies heavily on *Armistead v. State Personnel Board* (1978) 22 Cal.3d 198 (*Armistead*). *Armistead* involved a civil servant who sought to withdraw a written resignation he had submitted six days earlier. (*Id.* at p. 206.) The California Supreme Court held that "unless valid enactments provide otherwise, an employee is entitled to withdraw a resignation if she or he does so (1) before its effective date, (2) before it has been accepted, and (3) before the appointing power acts in reliance on the resignation." (*Ibid.*)

Toor contends she was entitled to rescind her notice of intent to retire because each of the *Armistead* factors was present, that is, she sought to rescind her resignation before the effective date of her retirement, before the notice had been properly accepted by the District, and before the District relied on her retirement.

But *Armistead* is readily distinguishable from the case before us. First, *Armistead* involved an offer of resignation, while this case involves the acceptance of the District's retirement incentive offer. In *Armistead*, a resignation had been tendered to a state agency and still awaited the agency's acceptance. Here, in contrast, nothing was left in limbo. Toor did not submit an unsolicited resignation that the District had yet to accept, but instead accepted the District's incentive offer to retire early. The document Toor submitted served two functions, described in the notice itself: "Once submitted, the employee's statement of intent to retire is IRREVOCABLE, *and* shall serve as the employee's resignation at the end of the 2002/2003 school year . . . ." (Italics added.) The notice set forth the terms of the District's incentive offer by combining what would normally be a two-step process into one: it served as Toor's notice of intent to retire and as her resignation at the end of the school year. In other words, the *Armistead* employee submitted an offer to leave employment, while Toor accepted the District's offer to do so. There is nothing in *Armistead* to suggest that a right to rescind exists in such a situation.

More importantly, *Armistead* did not involve an express acknowledgement of an irrevocable decision. The employee in that case did not purport to submit an irrevocable notice of resignation. Here, in contrast, the flyer informing teachers of the District's offer explicitly stated that "[o]nce submitted, the employee's statement of intent to retire is IRREVOCABLE, and shall serve as the employee's resignation at the end of the 2002/2003 school year, unless the District does not fund his/her application." The form submitted and signed by Toor stated unequivocally: "I acknowledge that my election to retire at the end of the 2002/2003 school year is irrevocable, unless the District does not fund my early retirement request." This acknowledgment of an irrevocable decision places Toor in a situation markedly different from that of the employee in *Armistead*.

Toor raises several other theories challenging the validity of her notice of intent to retire. None of these theories has merit.

Toor asserts that Education Code section 44930, subdivision (a) guarantees that her notice could not take effect until accepted by the District's governing board. Holding otherwise, she argues, violates Government Code section 3540, which states that collective bargaining under EERA "shall not supersede other provisions of the Education Code." Contrary to Toor's view, there is no statutory conflict.

Education Code section 44930 provides in relevant part: "Governing boards of school districts shall accept the

resignation of any employee and shall fix the time when the resignation takes effect . . . .”

Toor argues that under this provision, her notice of intent could not take effect until accepted by the District’s governing board, and therefore its acceptance by the District office staff had no legal significance. The parties discuss at length whether the District’s board had delegated the power to accept resignations to the superintendent or office staff, but those concerns are beside the point. What Toor submitted was not a typical resignation; it was a notice of intent to retire that included an effective resignation date as well. As we have already discussed, a resignation is an offer by an employee to leave employment that must be accepted by a district’s governing board. Here, in contrast, Toor did not submit such an offer but instead accepted the District’s offer to participate in an early retirement program, with resignation automatically effective at the end of the school year.

“‘“‘An offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it.’” [Citations.]’” (*Donovan v. RRL Corp.* (2001) 26 Cal.4th 261, 271.) The fact that the District had leeway to determine whether to fund more than five early retirements did not transform Toor’s acceptance into an offer of resignation that needed to be accepted by the governing board of the district. Nor does the fact that Toor might have had additional paperwork to complete in order to effectuate her

retirement transform the document she submitted into a resignation for purposes of Education Code section 44930. In short, because Education Code section 44930 relates only to resignations and because the case before us does not involve a typical resignation, the statute has no relevance here.

Toor suggests the retirement incentive plan was not collectively bargained for, and is therefore invalid. The trial court concluded otherwise, and the evidence supports that determination. (See *California Correctional Supervisors Organization, Inc. v. Department of Corrections*, *supra*, 96 Cal.App.4th at p. 827.)

Toor errs in asserting that there was no evidence of bargaining between the District and WESTA. The District superintendent stated in her declaration: "On February 27, 2003, on behalf of the District, I proposed a retirement incentive offer to representatives of [WESTA] during negotiations for the 2003/04 school year. The retirement incentive was offered by the District to encourage early retirement so as to limit the anticipated number of positions that the District would be forced to reduce in the Spring. WESTA representatives voiced no opposition and approved the proposal for the retirement incentive offer."

Similarly, the then-WESTA president stated in his declaration that WESTA met with the District on February 27, 2003, "to negotiate the terms of the collective bargaining agreement for the next school year." He stated that during this meeting, the District superintendent "informed the WESTA

representatives that the District would be offering an enhanced retirement incentive to eligible teachers. The WESTA representatives consented to the offer for the enhanced retirement incentive by expressing no opposition to the offer. This practice was identical to that of the previous year, the 2001/2002 school year, where Superintendent Pearson proposed an enhanced retirement incentive offer to WESTA and no opposition was expressed by any WESTA representatives . . . ."

This evidence demonstrates that the District proposed the enhanced retirement incentive to WESTA, that WESTA had no objection, and that WESTA consented to the proposal. Toor seems to believe that collective bargaining obligations are met only if the parties reach agreement after some wrangling. That is not the case. The fact that WESTA agreed to the early retirement program without objection does not mean that the program was not collectively bargained-for.

Citing Government Code section 3540.1, subdivision (h), Toor next contends that collective bargaining requirements were not met because there was no written agreement on this point. Toor misreads the statute. Government Code section 3540.1, subdivision (h) defines "meeting and negotiating" as "meeting, conferring, negotiating, and discussing by the exclusive representative and the public school employer in a good faith effort to reach agreement on matters within the scope of representation and the execution, *if requested by either party*, of a written document incorporating any agreements reached . . . ." (Italics added.) Because there was no evidence

presented that either party requested that their agreement on the retirement incentive program be reduced to writing, the lack of a written agreement is of no significance.

Toor also suggests the agreement was invalid because, contrary to provisions of the EERA, the public was not informed of the proposed retirement incentive program before it was adopted. Toor does not have standing to raise this claim in this forum.

Government Code section 3547 provides in relevant part: "(a) All initial proposals of exclusive representatives and of public school employers, which relate to matters within the scope of representation, shall be presented at a public meeting of the public school employer and thereafter shall be public records. [¶] (b) Meeting and negotiation shall not take place on any proposal until a reasonable time has elapsed after the submission of the proposal to enable the public to become informed and the public has the opportunity to express itself regarding the proposal at a meeting of the public school employer."

In a similar vein, Government Code section 3547.5, subdivision (a) provides: "Before a public school employer enters into a written agreement with an exclusive representative covering matters within the scope of representation, the major provisions of the agreement, including, but not limited to, the costs that would be incurred by the public school employer under the agreement for the current and subsequent fiscal years, shall be disclosed at a public meeting of the public school employer

in a format established for this purpose by the Superintendent of Public Instruction."

PERB has a regulatory complaint procedure for resolving this type of EERA public notice violation that is separate and apart from the unfair practice charge process. (*Beaumont Unified School District v. Beaumont Teachers Association* (1984) 9 PERC ¶ 16049, p. 14, fn. 3.) "PERB's exclusive jurisdiction extends to all alleged violations of the EERA, not just those which constitute unfair practices." (*Personnel Com. v. Barstow Unified School Dist., supra*, 43 Cal.App.4th at p. 885.) Consequently, PERB's jurisdiction preempts that of the trial court (*id.* at p. 886), and Toor's claim was not raised in the appropriate forum. Relief should have been sought before PERB, not the courts. (See *id.* at p. 890.)

Moreover, Toor cannot demonstrate a beneficial interest that would warrant relief. "Ordinarily, a petitioner seeking a writ of mandate or administrative mandate must show that he or she is beneficially interested in the outcome. [Citations.] 'Beneficially interested' generally means the petitioner has 'some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large.'" (*Sacramento County Fire Protection Dist. v. Sacramento County Assessment Appeals Bd.* (1999) 75 Cal.App.4th 327, 331.) Toor's interest in the public notice provisions is no different from that of other members of the public who share an interest in being informed. (See *id.* at

p. 332.) She therefore has no standing as a beneficially interested party.

Changing gears, Toor argues that even if her notice of intent to retire is viewed as an acceptance of the District's offer, the evidence established that her form was submitted after the 5:00 p.m. deadline and her acceptance was therefore ineffective. This argument is a red herring. As the trial court commented: "[T]he parties have expended considerable effort in attempting to demonstrate that [Toor] submitted her election either a few minutes before, or a few minutes after, 5:00 p.m. on March 7, 2003. In the Court's view, these efforts are misplaced. Like any other contractual terms, timeliness provisions are subject to waiver by the party for whose benefit they are made. (*Gladje v. Darwish* (2003) 113 Cal.App.4th 1331, 1339.) The Court concludes that the 5:00 p.m. time limit existed for the benefit of the District, e.g., so that it could determine by the close of business on March 7 which employees, if any, had elected the Option. It strains all logic to suppose that the 5:00 [p.m.] provision was put in place to act as a post-election savings in the event that an employee decided that his or her election was improvident. If, as may have happened here, the employee actually submitted her election a few minutes past five o'clock, and it was accepted by the District personnel, there is no basis for characterizing such as more than a momentary forbearance by the District of the timeliness provision." We agree with this conclusion.

Toor next contends that even if her acceptance was timely, no enforceable agreement was reached because there was no meeting of the minds on the question of whether her notice of intent to retire was irrevocable. She asserts that, despite the clear language of the notice that she signed, Kesterson told her that she could revoke her notice if she contacted Kesterson over the weekend. But at oral argument, Toor acknowledged that conflicting evidence had been presented as to what Kesterson told her. This conflict was not resolved by the trial court.

For purposes of argument, we set aside concerns relating to admissibility of parole evidence to challenge a document that expressly and unambiguously states that Toor's decision was irrevocable. (See *Pacific Gas & E. Co. v. G.W. Thomas Drayage etc. Co.* (1968) 69 Cal.2d 33, 37.) Nonetheless, Toor's claim is unpersuasive.

Toor cites *Sherman v. Board of Trustees* (1935) 9 Cal.App.2d 262, in which the uncontradicted evidence demonstrated that a school superintendent urged a teacher to submit a notice of resignation to circumvent tenure laws, while at the same time reassuring her that if this notice was submitted, she would be reemployed. (*Id.* at pp. 263-264.) The teacher submitted her notice, was reemployed, but was subsequently denied tenure on the grounds that she had not served the requisite number of consecutive years. (*Id.* at pp. 264-265.) Under those circumstances, the court had no trouble concluding the teacher did not truly intend to resign, and ordered the teacher reinstated to a permanent position. (*Id.* at pp. 266-267.)

Here, however, Toor decided to submit a notice of intent to retire, signed a statement acknowledging the irrevocable nature of this notice, and later had second thoughts about her decision. The contrast between this case and *Sherman* is stark.

Another case relied upon by Toor, *Mahoney v. Board of Trustees* (1985) 168 Cal.App.3d 789, is also distinguishable. In that case, a community college instructor submitted a letter of resignation and then sought to withdraw it prior to its acceptance. (*Id.* at pp. 799-800.) The court ordered the teacher reinstated to his teaching position. (*Id.* at pp. 799-801.) But as we have already explained, the case before us does not involve the typical offer to resign, but instead involves an acceptance of the District's offer of a retirement incentive. The agreement was concluded when Toor submitted her notice of intent to retire. Any subsequent misgivings about that decision does not mean that a meeting of the minds did not occur when Toor submitted her form.

Toor also frames her argument as one of mistake of fact, asserting that she thought she could rescind her decision if she so informed Kesterson over the weekend.

Rescission for a unilateral mistake of fact is warranted only if "the effect of the mistake is such that enforcement of the contract would be unconscionable." (*Donovan v. RRL Corp.*, *supra*, 26 Cal.4th at p. 282.) "An unconscionable contract ordinarily involves both a procedural and a substantive element: (1) oppression or surprise due to unequal bargaining power, and

(2) overly harsh or one-sided results." (*Id.* at p. 291.) That is not the case here.

The retirement incentive program was the result of an agreement by the District and WESTA. The program was clearly described to the teachers, and the irrevocable nature of submitted notices of intent to retire was emphasized in the flyer and in the notice to be signed. There was no oppression or surprise, nor was there any one-sided result.

In fact, unconscionability comes into play only if Toor is allowed to rescind her notice. If an irrevocable agreement can be made revocable by an individual employee's unilateral mistake of fact, the collective bargaining process becomes illusory. An employee can evade the collectively-bargained-for benefit and essentially negotiate individually with the District in direct contradiction of EERA, which provides: "[O]nce an employee organization is recognized or certified as the exclusive representative of an appropriate unit . . . only that employee organization may represent that unit in their employment relations with the public school employer." (Gov. Code, § 3543.1, subd. (a).) In other words, "[o]nce an exclusive bargaining representative is so chosen, employees are prohibited from negotiating individually over terms and conditions of employment. . . . It is a fundamental principal . . . that a member of a bargaining unit is bound by the terms of a valid collective bargaining agreement, though he is not formally a party to it and may not even belong to the union which negotiated it. [Citations.] The courts will relax this rule

only where enforcement of a collective bargaining term would contravene an extraordinarily strong and explicit state policy." (*San Lorenzo Education Assn. v. Wilson* (1982) 32 Cal.3d 841, 846; see also *Vogel v. Los Angeles Unified School District* (1983) 7 PERC ¶ 14173.) No such policy exists here.

In sum, Toor's second thoughts about retiring do not transform her irrevocable notice of intent to retire into one that she can rescind. Nor is her notice otherwise void. The trial court properly denied her petition for a writ of mandate.

DISPOSITION

The judgment is affirmed. The District is awarded its costs on appeal. (Cal. Rules of Court, rule 27(a)(2).)

HULL, J.

We concur:

SCOTLAND, P.J.

BUTZ, J.